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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

IN RE: UBER TECHNOLOGIES, INC.  
 PASSENGER SEXUAL ASSAULT  
 LITIGATION

Case No. 3:23-md-3084-CRB

**DEFENDANTS UBER TECHNOLOGIES,  
 INC., RASIER, LLC, AND RASIER-CA,  
 LLC’S MOTION TO MODIFY PRETRIAL  
 ORDER NO. 5**

This Document Relates to:

ALL ACTIONS

Judge: Honorable Lisa J. Cisneros  
 Date: February 22, 2024  
 Time: 3:00 PM via Zoom  
 Courtroom: G – 15th Floor

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC (collectively, “Uber”) submit this brief in support of their Motion to Modify Pretrial Order No. 5 (the “Motion”). In compliance with Pretrial Order (“PTO”) No. 5, Uber is gathering the documents it produced in prior sexual assault cases and arbitrations concerning Uber’s general (*i.e.*, not case-specific) policies, procedures, practices, and safety measures related to sexual assault. However, Uber respectfully requests that PTO No. 5 be modified to the extent that Uber shall not be required to produce documents it produced in other sexual assault cases that relate specifically to the plaintiffs in those cases.<sup>1</sup> It is neither relevant nor appropriate to require the production of documents about these specific plaintiffs, who are alleged victims of sexual assault or misconduct and many of whom decided to resolve their claims privately and confidentially without a public trial or other adjudication. The Court should thus modify PTO No. 5 for four reasons:

*First*, these highly-sensitive plaintiff-specific documents about other, unrelated incidents of sexual assault or misconduct have no relevance to the unique and highly-individualized incidents and experiences alleged by the MDL Plaintiffs. No two incidents of alleged sexual misconduct are alike and no two victims of sexual misconduct experience the same impact. The nature of the alleged misconduct ranges from inappropriate comments to sexual assault, and all variations in between, and the circumstances of the alleged incidents vary dramatically from case to case. The principal tortfeasors (the independent drivers), the conduct of the independent drivers, and the consequences for the plaintiffs are different in every case. What might have happened to one individual says nothing about what might have happened to another individual, and thus has absolutely no relevance here. For that reason alone, PTO No. 5 should be modified.

*Second* - - and perhaps most importantly - - production of plaintiff-specific documents poses very serious privacy and confidentiality concerns for the alleged victims of sexual assault or misconduct, many of whom chose to resolve their cases on a private and confidential basis and

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<sup>1</sup> In the context of this brief, lower case “plaintiffs” refers to plaintiffs in the prior litigations at issue, not the Plaintiffs in this MDL.

1 thereby put their legal claims behind them. *Documents involving survivors of sexual assault do*  
 2 *not constitute “off the shelf discovery” as contemplated in other mass tort contexts.* Production  
 3 of case-specific documents without the plaintiffs’ knowledge or consent unnecessarily deprives  
 4 survivors of control and agency over their own experiences, when it should be up to them to decide  
 5 whether, when, where, and how to share the details of these uniquely traumatic events. These  
 6 concerns are part of the reason that nearly all of the plaintiff-specific documents are governed by  
 7 protective orders and confidentiality agreements. Absent those protections, the individual  
 8 plaintiffs might never have pursued their legal claims, and the documents about their incidents  
 9 might never have been produced in litigation.

10 *Third*, to the extent that the MDL Plaintiffs seek plaintiff-specific discovery to show that  
 11 Uber was on notice of reports of sexual assault or misconduct by other independent drivers using  
 12 the Uber platform, that is duplicative of information MDL Plaintiffs already possess, and is  
 13 unnecessary. The documents that Uber will produce in discovery, the written discovery and  
 14 depositions available to the MDL Plaintiffs, and publicly-filed complaints will more than suffice.  
 15 The MDL Plaintiffs do not need, on top of all that, documents about specific individuals and  
 16 incidents that are unrelated to the incidents at hand and capture private experiences of survivors  
 17 who have not asked to be involved in this litigation.

18 *Finally*, Uber could be seriously prejudiced by production of case-specific documents from  
 19 prior cases, as the underlying allegations in those cases were never legally or factually tested or  
 20 adjudicated and may not even involve issues presented in the MDL cases. If the MDL Plaintiffs  
 21 intend to use case-specific documents in their own cases, Uber will not be able to defend itself and  
 22 its actions as they relate to the previously-resolved cases without effectively reopening and taking  
 23 discovery in those cases. In this way, production of those documents risks this MDL devolving  
 24 into mini-litigations over the facts of cases not at issue in the MDL that have long been resolved.<sup>2</sup>

25 <sup>2</sup> Moreover, some prior litigations related to sexual assault are even further disconnected from the  
 26 cases in this MDL. For example, some of the prior litigations involve alleged assaults committed  
 27 by someone other than an independent driver or someone fraudulently posing as an independent  
 28 driver. Other cases involve alleged incidents that occurred long (*i.e.*, months) after the alleged  
 Uber-connected ride took place. Discovery in these types of cases involve documents that have  
 no relevance to the MDL cases and should not be produced here.

For all or any one of the above reasons, PTO No. 5 should be modified such that Uber need not produce plaintiff- and case-specific documents from prior cases.<sup>3</sup>

## II. PROCEDURAL HISTORY

In PTO No. 4, the Court ordered the parties to file joint or competing proposals for a PTO on discovery. ECF No. 152 at 6. On December 21, 2023, following several meet and confers on a wide variety of discovery and pretrial issues, the parties submitted competing proposals covering various topics including, among other things, the stay of discovery and coordinated discovery. *See* ECF Nos. 168 (Plaintiffs’ proposal), 171 (Uber’s proposal). Although Plaintiffs’ submission included a request for production of documents produced in other litigations,<sup>4</sup> because the parties’ submissions were filed in parallel, Uber did not have the opportunity to brief its objections to that particular request. On December 28, 2023, the Court issued PTO No. 5 which, among other things, ordered Uber to produce “all documents [Uber] produced in any other Uber sexual assault cases, including arbitrations, and any other cases about the ‘Safe Rides Fee.’”<sup>5</sup> ECF No. 175 at 4.

In their submission preceding PTO No. 5, the MDL Plaintiffs appeared to acknowledge that the scope of productions related to these prior litigations likely needed to be narrowed, and affirmatively posed the idea of engaging in discussions with Uber about narrowing the scope of initial discovery “to ensure proportionality.” ECF No. 168 at 4. Plaintiffs further contemplated that if Uber were to provide a “meaningful argument as to why such discovery cannot or should not take place here, . . . the Court could still order these productions in general and refer the matter to Judge Cisneros to hear any objections as to scope or burden of specific requests.” *Id.*

<sup>3</sup> For these same reasons, PTO No. 5, ¶ 6.B, should be modified to limit the requirement for production of documents “pertaining to alleged individual incidents” unless the documents address the individual incidents alleged by Plaintiffs in this MDL.

<sup>4</sup> Plaintiffs refer to production of documents in prior cases as “off the shelf discovery,” which mischaracterizes the nature of the productions they seek. There are no *pro forma* documents produced in each prior case, and documents produced in prior litigations are not neatly packaged on a shelf ready for easy production at the push of a button. Rather, collecting documents produced in prior cases requires Uber to search for produced documents (as there has been turnover among the Uber in-house counsel team with knowledge of those productions) and, in some instances, contact the numerous different outside counsel from across the country that handled the various prior litigations at issue and made the productions. Prior to PTO No. 5, no judge in any case against Uber related to sexual assault has ordered (even when requested) “off the shelf discovery.”

<sup>5</sup> Uber did not produce any documents related to sexual assault in the “Safe Rides Fee” case, *McKnight v. Uber Technologies, Inc.*, Case No. 4:14-cv-05615-JST (N.D. Cal.).

Uber now respectfully requests the Court modify PTO No. 5 to require production of only non-case-specific and non-plaintiff-specific documents Uber produced in prior litigations. Uber is gathering other documents pursuant to PTO No. 5, including non-case-specific documents produced in prior sexual assault litigations, which will supply Plaintiffs with the “common defense discovery” they seek. *See id.* at 3. This includes policies, procedures, guidelines, and other documents relating to sexual assault that were produced in other cases.

### III. LEGAL STANDARDS

#### A. Modification of an Order

“As long as a district court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient.” *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (quoting *Melancon v. Texaco, Inc.*, 659 F.2d 551, 553 (5th Cir. 1981)) (emphasis omitted). This power “is derived from the common law, not from the Federal Rules of Civil Procedure.” *Id.* at 886.

#### B. Limits of Discovery

“[D]iscovery, like all matters of procedure, has ultimate and necessary boundaries.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). A principal boundary is established by Federal Rule of Civil Procedure 26(b)(1), which permits parties to “obtain discovery regarding any nonprivileged matter” so long as the discovery is “*relevant* to any party’s claim or defense and *proportional* to the needs of the case.” Fed. R. Civ. P. 26(b)(1) (emphasis added).

Under the plain language of Rule 26(b)(1), evidence is not discoverable simply because it is relevant; it must also be proportional to the needs of the case. Therefore, a district court must limit even relevant discovery in some instances, including when “the discovery sought is unreasonably cumulative or duplicative.” Fed. R. Civ. P. 26(b)(2)(C)(i). As explained in the relevant notes from the Advisory Committee on Civil Rules, “[t]he objective [of Rule 26] is to guard against redundant or *disproportionate* discovery by giving the court authority to reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry.”

*Gonzales v. Google, Inc.*, 234 F.R.D. 674, 680 (N.D. Cal. 2006) (quoting Fed. R. Civ. P. 26 advisory committee’s note to 1983 amendment) (emphasis added). Over time, Rule 26(b)(1) has been amended to address “the need to impose reasonable limits on discovery through increased reliance on the common-sense concept of proportionality.” *Jensen v. BMW of N. Am., LLC*, 328 F.R.D. 557, 560 (S.D. Cal. Jan. 15, 2019) (internal quotation marks and citations omitted).

Courts thus require parties to “size and shape their discovery requests to the requisites of a case,” and discovery should be tailored to “provide parties with ‘efficient access to what is needed to prove a claim or defense, but eliminate unnecessary or wasteful discovery.’” *Id.* (quoting *Roberts v. Clark Cty. Sch. Dist.*, 312 F.R.D. 594, 603 (D. Nev. 2016)). Here, the MDL Plaintiffs cannot show that documents specific to individual victims in prior, resolved lawsuits are needed or otherwise proportionate to proving their own individual claims.

#### IV. ARGUMENT

PTO No. 5 should be modified because the case-specific and plaintiff-specific documents produced by Uber in prior litigations involving sexual assault are irrelevant, and raise serious privacy and confidentiality concerns for the plaintiffs in those prior cases. The production of the case-specific discovery is at odds with the survivor-centered approach that empowers survivors of sexual abuse to control and share stories of their unique and traumatic experiences on their own terms. Moreover, the prior cases did not proceed to trial, and the introduction of unproven allegations risks causing this litigation to devolve into mini-litigations in which Uber would have to effectively reopen discovery to defend against allegations related to these prior incidents. Production of documents produced in unrelated, irrelevant, and resolved cases not only injects other plaintiffs into cases they did not ask to be a part of, but it also risks diverting the parties’ and the Court’s attention away from the efficient resolution of the MDL cases.

##### A. Plaintiff-Specific Documents From Prior Cases Are Not Relevant to the Allegations of the MDL Plaintiffs

Plaintiff-specific documents and information about other, unrelated incidents of sexual assault or misconduct have no relevance to the incidents and experiences alleged by any of the MDL Plaintiffs. There is no indication that the particular factual circumstances of the incidents

alleged in prior cases are the same as in the MDL cases: the plaintiffs are all different, the independent drivers are all different, the time periods are different, the locations are all different, the alleged misconduct is all different (ranging from inappropriate comments to assault), the circumstances of the incidents are all different (some alleged incidents occurred during the rides at issue while others occurred hours, days, or weeks after the rides), and the alleged injuries are all different. The MDL Plaintiffs' claims focus on the intentional and potentially criminal misconduct of specific independent drivers. What happened to each MDL Plaintiff, and how each was impacted, varies from case to case, and from the prior cases. Thus the case-specific documents from prior cases regarding other alleged incidents of sexual assault and behaviors of other independent drivers do not relate to what happened to the MDL Plaintiffs.

That is especially true because sexual assaults are highly individualized incidents that can take many different forms and are caused by the intentional and often criminal behavior of different independent drivers, under totally different conditions and circumstances. The MDL Plaintiffs' own co-lead counsel has stated that in "individual cases," "the details and severity of the cases widely vary."<sup>6</sup> Where, as here, the proximate cause of the MDL Plaintiffs' alleged injuries is the intentional misconduct of specific independent drivers, case-specific documents about different alleged injuries caused by different independent drivers, under entirely different circumstances, are immaterial and unlikely to lead to the discovery of admissible evidence.

The prior cases also are likely to differ in terms of the claims and theories of liability raised by the plaintiffs, as well as the merits of such claims. These factors necessarily dictated the appropriate scope of discovery, and what was ultimately produced by Uber, in the prior litigations and should not be transposed onto this MDL to dictate the proper scope of discovery here.

#### **B. Production of Plaintiff-Specific and Case-Specific Documents From Prior Cases Presents Serious Privacy and Confidentiality Concerns for Survivors**

Even if Plaintiffs were requesting relevant documents - - which they are not - - the Court should still modify PTO No. 5 because production of the plaintiff-specific and case-specific

<sup>6</sup> *Uber faces mounting sexual assault, harassment lawsuits in San Francisco*, KRON4 (July 1, 2021, 10:24 AM), <https://www.kron4.com/news/bay-area/uber-faces-mounting-sexual-assault-harassment-lawsuits-in-san-francisco>.



documents from prior cases regarding sexual assault would infringe on the privacy and confidentiality interests of the plaintiffs in those prior cases - - *i.e.*, individual victims and survivors of alleged sexual assault - - who are not involved in this litigation and who, quite to the contrary, chose to resolve their claims against Uber privately and confidentially.

The type of documents sought by the MDL Plaintiffs - - including reports and statements regarding the sexual assaults of other individuals and the impact of those assaults on those other individuals - - are by their very nature extremely sensitive and personal, often involving traumatic and life-altering consequences, such that disclosure would invade their privacy and intrude on their recovery. *See Pioneer Elecs. (USA) v. Superior Ct.* 40 Cal. 4th 360, 372 (2007) (observing that disclosure of “particularly sensitive” personal information such as one’s personal medical history or current medical condition constitutes a serious invasion of privacy). The significance of this privacy interest is demonstrated by the fact that many plaintiffs in sexual assault lawsuits, including the MDL Plaintiffs, choose to file under pseudonyms to protect their identities and avoid public scrutiny of such private matters.

The plaintiffs in these prior cases already decided *not* to share their stories in court.<sup>7</sup> This is part of the reason why there are protective orders, confidentiality agreements, and nondisclosure agreements governing those cases, including the case-specific documents. Absent these legally binding protections, the plaintiffs might have decided against pursuing their legal claims - - or at least not in a judicial forum - - and their case-specific documents might have never been produced.

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<sup>7</sup> A survivor’s right to choose if, when, and how to speak up about her experience is widely recognized. *See, e.g.*, N.J. Dep’t of L. & Pub. Safety, Div. of Crim. Just., *Attorney General Standards for Providing Services to Victims of Sexual Assault* (3d ed. 2018) (setting standards for “respecting the integrity, choices, and autonomy of each victim” and “protecting the victim’s privacy and confidential information”). For example, numerous states recognize the right of a survivor to choose whether to report their assault to law enforcement. *See, e.g.*, N.Y. Dep’t of Health, *N.Y. State Sexual Assault Victim Bill of Rights*, <https://www.health.ny.gov/publications/1934.pdf>; N.J. Stat. § 52:4B-60.2(c)(3).

These rights are imperative to a survivor’s healing. To illustrate, in one study of sexual assault, researchers found that “[a]ll of the participants expressed feelings of discomfort with the police” and “[m]any described that making a report to the police was challenging due to shame, vulnerability, and exposure of a disclosure.” Jodie Murphy-Oikenen et al., *Unfounded Sexual Assault: Women’s Experiences of Not Being Believed by the Police*, *J. Interpersonal Violence* (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9136376/>.

When those plaintiffs brought their own cases and entered into corresponding protective orders and agreements, they could not have anticipated the instant coordinated proceeding, the first of its kind for sexual assault-related claims against Uber. While the resurfacing of a plaintiff's case in any forum could be anxiety-inducing, the scale of this consolidated litigation amplifies this risk. There are approximately 30 Plaintiffs' firms involved in this MDL to date, and the large number of people involved could increase anxiety for a plaintiff about the number of people with access to documents relevant to her personal experience, as well as a perceived risk of disclosure.<sup>8</sup> This consolidated case is also undeniably higher profile than a single sexual assault case. The Plaintiffs who joined this MDL were able to weigh these considerations before deciding whether and how to proceed with their claims. The plaintiffs in prior litigations were not able to consider these factors and have not been empowered to make these decisions for themselves.

Even if it were possible to redact all identifying information in the case-specific documents - - which would be difficult and does not guarantee non-disclosure - - it would not change the fact that survivors should have agency over their stories, which they did not necessarily want told in court or, worse, *retold* in court by others. Assuming that plaintiffs' identities can be shielded with absolute certainty is a mistake when individual identities and information are so readily accessible online and from other public sources. And more importantly, it should be up to those individuals, not the parties, to decide what (if any) protections sufficiently guarantee their privacy and security.

Recognizing these concerns, sexual violence advocacy organizations strongly recommend a "survivor-centered" approach to incidents of sexual assault and misconduct and encourage justice systems to incorporate this approach. *See, e.g., Nat'l Sexual Violence Res. Ctr. et al., Promoting Collaboration Between Victim Advocates and Sex Offender Management Professionals: A Resource Package*, at 4 (2016) <https://www.nsvrc.org/sites/default/files/ovw-collaboration-v-2.pdf> (advocating for practices that are "responsive to victims' rights, needs, and interests and do not further traumatize or otherwise negatively impact survivors"); *id.* at 43 (noting

<sup>8</sup> For this reason, the operative Protective Order in this MDL does not cure the privacy concerns at issue. The privacy rights of a non-party who elected to remain anonymous in a prior case or otherwise desired to keep her personal information and story private are not protected when documents specific to her prior case are disseminated to hundreds of individuals (including Plaintiffs, lawyers and legal staff, and Court staff) in a lawsuit that has nothing to do with them.

the importance of “ensur[ing] victim input in critical decision-making at all phases of the management process”). Production of plaintiff-specific and case-specific documents from prior sexual assault cases is contrary to survivor-centric principles. All of the other cases at issue involve plaintiffs who are not part of this MDL, and it should not be up to the parties here to decide whether and how to share exquisitely personal details about a non-party’s unique and traumatic experience of sexual assault, especially when there is no compelling need for any unwelcome disclosures.

Finally, a survivor’s expectation of privacy and confidentiality is of chief importance. Without assurances, survivors may opt not to report instances of sexual assault for fear that taking action could lead to unwanted disclosure of their stories, even years after they thought their cases had been resolved. Sexual assaults are vastly underreported as is. *See, e.g., Paramasamy v. Ashcroft*, 295 F.3d 1047, 1053 & n.3 (9th Cir. 2002) (noting that sexual assault is underreported and collecting sources); Cameron Kimble & Inimai M. Chettiar, *Sexual Assault Remains Dramatically Underreported*, Brennan Ctr. for Just. (Oct. 4, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/sexual-assault-remains-dramatically-underreported> (identifying fear of retaliation from society, “revictimization, distortion of allegations, and generally not being believed” as reasons why sexual assault is underreported). Any remote or conceivable benefit of producing these case-specific documents is far outweighed by the potential that doing so could chill a survivor’s willingness to report what is already an underreported crime.

### C. Plaintiff-Specific and Case-Specific Documents Are Not Needed

Plaintiffs may contend that plaintiff-specific and case-specific documents from prior cases are relevant to show *notice* to Uber of allegations of sexual assault. Uber disagrees that a prior sexual assault committed by a different independent driver under different circumstances in a different state and at a different point in time is sufficient to give Uber notice that any of the independent drivers involved in the MDL Plaintiffs’ cases would engage in sexual assault or misconduct. But in any event, the MDL Plaintiffs do not need case-specific discovery from other cases because they have numerous other avenues of discovery for exploring the alleged notice issue. For one, the complaints in the prior lawsuits are publicly filed, and there are other documents Uber has made publicly available. Then, there are the other documents Uber will produce in the

1 ordinary course of discovery in the MDL, plus interrogatories, requests for admission, stipulations,  
 2 and depositions. Third, data and statistics produced in Uber's U.S. Safety Reports include figures  
 3 involving sexual assault and other incidents occurring in connection with Uber's platform. There  
 4 has been no showing made that all these sources will not suffice to make whatever arguments  
 5 MDL Plaintiffs wish to make about notice.

6 **D. Production of Plaintiff-Specific and Case-Specific Documents Could**  
 7 **Seriously Prejudice Uber and Unnecessarily Delay Resolution of the MDL**  
 8 **Plaintiffs' Cases**

9 Production of case-specific documents from prior litigations - - the vast majority of which  
 10 have been resolved either by dismissal or settlement - - invites unwarranted and unnecessary  
 11 scrutiny into closed matters that could significantly prejudice Uber. Because none of these prior  
 12 litigations were resolved through a trial or hearing, the merits of contested allegations were never  
 13 tested, much less conclusively or legally determined. To the extent the MDL Plaintiffs seek to use  
 14 plaintiff-specific and case-specific discovery produced in prior cases, Uber will be unable to  
 15 defend itself without effectively reopening and taking discovery in the previously-resolved cases.  
 16 In this way, introduction of these documents in the MDL creates an unnecessary risk that this  
 17 litigation will devolve into mini-litigations concerning other alleged incidents or investigations  
 18 into what Uber, the independent drivers, or the plaintiffs from those prior cases did or did not do  
 19 in relation to other alleged offenses - - all of which is unrelated to the cases in the MDL.

20 It does not serve the purpose of the MDL to relitigate previously-resolved cases. It is also  
 21 not feasible - - or an efficient use of the justice system - - for the parties in this case to build the  
 22 necessary record to make documents produced in other cases remotely informative. Rather, the  
 23 parties should focus attention on the Plaintiffs, independent drivers, and alleged incidents involved  
 24 in the MDL cases. Any focus on previously-resolved litigations would unnecessarily delay  
 25 discovery into the incidents at issue and is not justifiable considering that the documents at issue  
 26 are not relevant. In the interests of judicial efficiency and resolution of the MDL cases, the parties  
 27 should not litigate or relitigate cases that have already been resolved and are not before this Court.

28 **V. CONCLUSION**

For the forgoing reasons, Uber respectfully requests that this Court grant the Motion.

1 DATED: February 6, 2023

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